

Blue Brief

*Stoller*

SOLICITOR

MAY 13 2005

U.S. PATENT & TRADEMARK OFFICE

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

05-1320  
(Opposition No: 91162195)

LEO STOLLER,

Appellant,

v.

NORTHERN TELEPRESCENCE CORP.

Appellee.

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Appeal from the United States Patent and Trademark Office  
Trademark Trial and Appeal Board

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**INFORMAL BRIEF AND RECORD OF APPELLANT**

*Leo Stoller*

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May 5, 2005

104

# UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

STOLLER V NORTHERN TELEPRESENCE

O5-1320

## Entry of Appearance

(INSTRUCTIONS: Counsel refer to Federal Circuit Rule 47.3. Pro se petitioners and appellants read paragraphs 1 and 18 of the Guide for Pro Se Petitioners and Appellants. This form was prepared using information currently known in the Clerk's Office. If this information is incorrect or incomplete, please provide the correct information. File this form with the clerk and serve it on the principal attorney for each party.)

Please enter my appearance:

☒ Pro Se ☐ As counsel for: LEO STOLLER

I am, or the party I represent is: Appellant

As amicus curiae or intervenor, this party supports (select one):

☒ Petitioner or appellant ☐ Respondent or appellee

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Statement to be completed by counsel only (select one):

☐ I am the principal attorney for this party in this case and will accept all service for the party. I agree to inform all other counsel for the party in this case of the matters served upon me.


☐ I am not the principal attorney for this party in this case.

Date admitted to Federal Circuit bar (counsel only): / /

This is my first appearance before the U.S. Court of Appeals for the Federal Circuit (counsel only):

☐ yes ☒ no

Date \_\_\_\_\_

  
\_\_\_\_\_  
Signature of Pro Se or Counsel

Date notice issued: 04/05/05

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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LEO STOLLER  
P.O. Box 35189  
Chicago, IL 60707-0189

Appellant,  
vs.

Appeal No: 05-1320

NORTHERN TELEPRESENCE CORP.  
(a Vermont corporation)  
96 John Putnam Memorial Drive  
Cambridge, Vermont 05444-0267

Appellee.  
\_\_\_\_\_ /

**INFORMAL BRIEF AND RECORD OF APPELANT**

The order entered by the Trademark Trial and Appeal Board, dated February 11, 2005, is a final and/or otherwise appealable judgment pursuant to Federal Circuit Rule 29(a)(5). See a true and correct copy of the Board's final order, attached hereto and marked as **Exhibit A**.

1. Have you ever had another case in this court? If so, state the name and number of each case.

Yes. Case No: 05-1040 - (Opposition No. 91/157,012).

2. Did the Board or Commission incorrectly decide or fail to take into account any facts? If so, what facts?

Yes. The Trademark Trial & Appeal Board dismissed opposer's notice of opposition for failing to file a timely request for an extension of time to oppose. Applicant's Application Serial No: 78-308,975 for the mark DARKSTAR published on January 28, 2003. Opposer filed its initial extension under CFR §1.8 certificate of mailing on February 25, 2003, requesting an extension of time up to and including May 27, 2003. See a true and correct copy of said request for extension, attached hereto and marked as **Exhibit B**. The Board sent a notice

to the opposer, dated April 18, 2003, stating:

"Potential opposer is advised that Trademark Rule 2.119(e) provides that every paper filed in an inter partes proceeding, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned paper will not be refused consideration if a signed copy is submitted to the Patent and Trademark Office within the time this defect by the Office. Accordingly, potential opposer is allowed until May 18, 2003 in which to submit a signed copy of its request for extension of time to oppose, failing which the request will not be given any consideration."

In compliance with the Board Order dated **April 18, 2003**, the Appellant filed a signed request for a ninety-day extension under 37 CFR §1.8 Certificate of mailing on **April 29, 2003**, attached hereto and marked as **Exhibit C**. On **May 19, 2003**, the Appellant filed its timely Notice of Opposition during the extension of time to oppose, pursuant to §303.05. As a result, the Board had *jurisdiction* to grant the Appellant extension of time to oppose up and until **May 27, 2003**.

Appellee does not present any evidence to support its contention that Appellant's initial extension, which was dated **February 25, 2003**, was not properly mailed by the Appellant under 37 CFR §1.8. The fact that the Board may not have associated the Appellant's **February 25, 2003** extension with the file until **April 3, 2003**, does not establish that the Appellant did not mail its initial extension of time to oppose pursuant to the 37 CFR §1.8 Certificate of mailing on **February 25, 2003**.

The Appellee attempts to prejudice the Board with a series of unrelated cases which have no precedent value for this matter. Trademark Trial & Appeal Board **Judges Hairston, Rogers and Drost**, have dealt with a similar type of allegation in a decision dated May 5, 2004, *Leo Stoller d/b/a Central Mfg. Co. v. WFJM Enterprises, Inc.*, Opposition No. 91155814, when opposer's opponent attempts to prejudice the Board with unrelated cases:

"Merely reciting opposer's (alleged) bad actions in other, unrelated litigations does not automatically confer 'bad actor' status on opposer in this proceeding."

Appellant's initial request for an extension of time to oppose, dated **February 25, 2003**, was mailed under 37 CFR §1.8 - Certificate of Mailing or Transmission.

"(a) ... correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as timely filed if the procedure described in this section is followed. *The actual date of receipt will be used for all other purposes.*"

Appellant's request for an extension of time was thus timely filed under §110.01, 37 CFR §1.8(a)(1)(i) and Appellant's §303.05 Opposition was filed on **May 19, 2003** during extension of time to Appellant.

"... if the correspondence is not received until after the expiration of the set period, the Board will consider it timely filed if the 'certificate of mailing' procedure described in Trademark Rule 2.197 is properly followed. See also TBMP §110.01 (2d ed. rev. 2004). The certificate of mailing procedure is applicable to all types of filings in Board proceedings, including a request for an extension of time to opposer. See TBMP §110.07 (2d ed. rev. 2004). Parties seeking to invoke this procedure must, prior to the expiration of the set period:

(1) deposit the correspondence with the U.S. Postal Service, with sufficient postage as first-class mail, with the proper USPTO address, and

(2) include a certificate on or with the correspondence which states the date of deposit and is signed (separate and apart from any signature for the piece of correspondence itself) by a person who has a reasonable basis to expect that the correspondence will be mailed on or before the date indicated.

See Trademark Rule 2.197(a). See also TBMP §110.02 (2d ed rev. 2004).

Additionally, we look to Trademark Rule 2.119(e) which states, in pertinent part, that"

'every paper filed in an inter partes proceeding and every request for an extension of time to file an opposition must be signed by the party filing it, or by the party's attorney, but an unsigned paper will not be refused consideration if a signed copy is submitted to the Board within the time limit set forth in the Board's notification of the signature defect.'

Thus, the rules require that both the submission and the certificate of mailing thereon must be signed in order for the submission to be given consideration. The Board will not refuse consideration if a signed copy is submitted within the time limit set forth in the notification of the signature defect by the Office. See Trademark Rule 2.119(e) and 2.197; see also TBMP §106.02 (2d ed rev. 2004). Inasmuch as a signature on a certificate of mailing operates to certify the date and manner of mailing on or before the applicable deadline, it is axiomatic that Trademark Rule 2.119(e) only authorizes the Board to obtain a copy of the original certificate that was properly signed on or before the expiration of the applicable period.

Potential opposer's first extension submission was not received by the Board until April 3, 2003, or approximately five weeks after the statutory deadline for its submission. Because this request was unsigned, yet bore a typewritten date which preceded the statutory deadline, the Board on April 18, 2003 allowed potential opposer additional time to submit a signed copy of its request which might establish timeliness vis-a-vis the certificate of mailing procedure and otherwise satisfy the USPTO's signature requirements for submissions." At page 8 of the Board's February 11, 2005 order.

The Board clearly erred and/or abused its discretion when it stated:

"The second extension submission includes a certificate of mailing on April 29, 2003, more than eight weeks after the statutory deadline, and thus, does not establish that potential

opposer timely filed a request to extend time to oppose on or before the February 27, 2003 deadline."

The Board issued an order on April 18, 2003, granting the Appellant until May 18, 2003, in which to file a request for an extension. See a true and correct copy of the Board's order, attached hereto and marked as **Exhibit C**.

The Appellant's second extension which included a certificate of mailing on April 29, 2003, attached hereto and marked as **Exhibit D**, was timely filed pursuant to the Board's order of April 18, 2003, which allowed the Appellant to file its extension until May 18, 2003.

The Board's finding that:

" ... opposer provides no evidence that might explain the discrepancies between the April 29, 2003 certificate of mailing date on the second extension submission and the February 25, 2003 certificate of mailing date on the first (unsigned) extension submission and third (signed) extension submission. We cannot overlook these contradictions."

The facts of this case are simple. The Board's order of April 18, 2003 (marked as Exhibit C) gave the Appellant time until May 18, 2003 to file a signed request for an extension of time. The Appellant filed its extension of time on April 29, 2003, in compliance with the Board order of April 18, 2003. See Exhibit D. There is no further explanation needed to confirm that the Appellant has filed an extension of time within the perimeters outlined by the Board's order of April 18, 2003.

The Board's final decision of February 11, 2005, which found that the Appellant did not file a timely request for an extension of time, should be reversed on its face.

The Board's finding below is totally erroneous and should be reversed:

"Under the circumstances, we find opposer has not met its burden of establishing the timeliness of the request to extend time to oppose filed by the entity under which opposer claims privity. As such, we hold that the Board's June 3, 2004, action (approving the extension request) was erroneous and it is accordingly vacated. The request to extend time to oppose if denied and consequently, the notice of opposition, filed May 16, 2003, is untimely."

The Board's order of April 18, 2003, marked as Exhibit C, lists the potential opposer as Central Mfg. Co. Leo Stoller is in privity with Central Mfg. Co., aside from the fact that

Leo Stoller in association with Central Mfg. is involved in over 40 ongoing oppositions and petitions to cancel before the Board, as well known to each and every member of the Board for over 15 years. In addition, the Board's order of April 18, 2003, clearly shows the names of Leo Stoller and Central Mfg. Co. listed on the order. It is clear from the Board's order of April 18, 2003, that Leo Stoller is in privity with Central Mfg. Co. It is clear that a timely request for an opposition was filed by Central Mfg. Co. on April 29, 2003, in complete conformity with the Board's order of April 3, 2003, wherein the Board had ordered "the potential opposer herein, Central Mfg. Co. to file a signed copy of its request for an extension of time to oppose" until May 18, 2003.

It is clear from the record in this case that a signed and fully executed request for an extension was properly filed on April 29, 2003, marked as Exhibit D.

It is clear that the Board's order granting Applicant's motion to dismiss the opposition as a nullity was erroneous and should be reversed. The Appellate Court is request to order the Board to initiate the opposition to Application Serial No. 76-308,975.

3. Did the Board or Commission apply the wrong law? If so, what law should be applied:

Yes. The Board should apply TMBP §110.07 (2d. ed. rev. 2004) and/or the Board should have given the *pro se* Appellant the opportunity to cure whatever defect in mailing the Board found.

The overriding concern of this Court and the Board is and should be to decide matters on their merits and not on procedural matters.

4. Did the Board or Commission fail to consider important grounds for relief? If so, what grounds?

Yes. The Board failed to consider the Appellant's timely filed request for an extension to oppose and chose instead to deny the Appellant's timely filed notice to oppose. Appellant's due process and equal protection rights under the 5th and 14th Amendments were violated on the flimsiest of procedural grounds. The Board slammed the courtroom door in the Appellant's face.

WHEREFORE, the Appellant prays that this Court reverse the Board's decision and order the Board to accept Appellant's request for an extension to oppose as timely filed.



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Dated: May 5, 2005

I certify that a copy of this brief and any attachments was sent to the attorney for Appellee, at the following address:

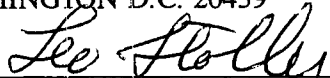
Steven W. Caldwell  
*BURR & BROWN*  
P.O. Box 7068  
Syracuse, NY 13261-7068



Appellant, Leo Stoller  
Dated: May 5, 2005

I certify that a copy of this brief and any attachments was sent to the following address:

US COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT  
717 MADISON PLACE N.W.  
WASHINGTON D.C. 20439



Appellant, Leo Stoller  
Date: May 5, 2005



UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Ryan

MAILED: February 11, 2005

Opposition No. 91162195

Leo Stoller

v.

Northern Telepresence  
Corporation

Before Quinn, Chapman, and Drost, Administrative Trademark  
Judges.

By the Board:

This proceeding was instituted by the Board on September 22,  
2004. This case now comes up for consideration of the following  
matters:

- (1) applicant's motion to dismiss the opposition as  
untimely and for sanctions against opposer;
- (2) opposer's motion to consolidate the opposition with  
Cancellation No. 92043666; and,
- (3) applicant's motion to extend and to suspend its time  
for filing its answer to the notice of opposition and  
its responsive brief on opposer's motion to  
consolidate.

We consider first the dispositive motion to dismiss and  
begin with a review of the relevant case filings. See Trademark  
Rule 2.117(b); *Boyds Collection Ltd. v. Herrington & Co.*, 65  
USPQ2d 2017 (TTAB 2003); and TBMP § 510.02(a) (2d. ed. rev.  
2004).

**EXHIBIT A**

Background

On January 28, 2003, the subject application, Serial No. 76308975, was published for opposition in the *Official Gazette*. See Trademark Rule 2.80. Pursuant to Section 13(a) of the Trademark Act, 15 U.S.C. § 1063(a), any notice of opposition or extension of time to file an opposition was due by February 27, 2003.

On April 3, 2003, the Board received an extension of time to oppose filed by Central Mfg. Co., through which the individual opposer Leo Stoller claims privity<sup>1</sup> as plaintiff in this proceeding (hereinafter "the first extension submission"). By this extension, Central Mfg. Co., as potential opposer, requested a ninety-day extension, up to and including May 27, 2003, within which to oppose the involved application. At the end of this request is a blank (or unsigned) signature block, but bearing the typewritten date, "February 25, 2003." Below the signature block is a certificate of mailing which also includes a typewritten date of "February 25, 2003." This, too, is unsigned.

On April 18, 2003, the Board issued an order, noting the filing on April 3, 2003 of the first extension submission and the fact that it was unsigned. The Board allowed potential opposer thirty days, i.e., until May 18, 2003, to submit a signed copy of its first extension request, failing which the unsigned paper

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<sup>1</sup> Whether opposer Leo Stoller, individually, has established any right to claim privity through potential opposer Central Mfg. Co. need not be considered herein in view of the Board's decision to dismiss this proceeding, as explained infra.

would be refused consideration. Within the allotted time, photocopies of two signed requests to extend were separately submitted (hereinafter, "the second extension submission"<sup>2</sup> and "the third extension submission.")

The second extension submission was signed in the main signature block by "Leo Stoller" as "Pres." of "Central Mfg. Co." and includes Mr. Stoller's signature again in the certificate of mailing. This extension submission is identical to the first, except there are no references to the "February 25, 2003" date and the certificate of mailing in the second submission bears a handwritten date of "4/29/03."

A photocopy of the third extension submission was received by the Board as an attachment to the notice of opposition, which appears to have been filed on May 16, 2003.<sup>3</sup> The third extension submission is identical to the first, except "Leo Stoller," as "Pres." of "Central Mfg. Co.," signed it on behalf of potential opposer. Mr. Stoller's signature appears in both the

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<sup>2</sup> The record contains only a photocopy of the second extension submission. The original signed paper was never associated with the Board's proceeding file. A photocopy was faxed to the Board on February 26, 2004 with proof of receipt on May 5, 2003 by the USPTO, consisting of a postcard affixed with a USPTO mailroom label.

<sup>3</sup> A review of the prosecution history for this proceeding reveals inconsistencies in the filing date entered by the Board's clerical staff for the notice of opposition and its corresponding exhibits. Nevertheless, inasmuch as the record includes a postcard with a USPTO mailroom label of May 16, 2003, we shall consider these documents as having been received by the USPTO on that date.

main signature block and in the certificate of mailing. As with the first, the third extension submission includes the typewritten date "February 25, 2003" near the signature lines in the main signature block and again, in the certificate of mailing. However, the record contains no evidence that this third extension submission, i.e., a fully signed extension request bearing the February 25, 2003 date, was ever received by the Board or otherwise mailed to the Board by the deadline.

On June 3, 2004, the Board issued an order which notified potential opposer that, *inter alia*, its "request to extend time to oppose filed on April 16, 2004 [sic - April 18, 2003] on behalf of Central Mfg. Co. is granted" and the subject application had inadvertently proceeded to registration due to a clerical error. On July 6, 2004, application Serial No. 76308975 was restored to pendency and the Board issued an order instituting this opposition proceeding on September 22, 2004.<sup>4</sup>

#### Applicant's Motion to Dismiss

The main issue before us is whether the opposition is untimely and is thus barred by Section 13(a) of the Trademark

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<sup>4</sup> A review of the notice of opposition reveals inconsistencies in the identification of the opposer and/or opposers intended to be named as party plaintiff(s) herein. Inasmuch as \$300 was submitted with the notice of opposition, an amount sufficient to cover the required filing fee for one opposer to oppose registration in one class, the Board instituted this proceeding only in the name of the "first named" party, i.e., in the name of "Leo Stoller," individually. See Trademark Rules 2.101(d)(1) and (3)(iii) and TBMP § 308.01(a) (2d. ed. rev. 2004). See also footnote 1, *supra*, regarding privity.

Opposition No. 91162195

Act, 15 U.S.C. §1063(a). Applicant argues that the opposition is untimely because potential opposer failed to file a signed request to extend with a signed certificate of mailing within the statutorily prescribed thirty-day period following publication (i.e., by the February 27, 2003 deadline). Applicant further argues that the Board erred as a matter of law in allowing potential opposer additional time to file a signed copy of its extension request. Applicant questions opposer's credibility and the veracity of the February 25, 2003 certificate of mailing date, given the extensive delay between the asserted mailing date of the first extension submission and the April 3, 2003 USPTO mailroom sticker affixed thereto. Applicant has also questioned opposer's conduct in this case based on his "history" of "bad-faith conduct and material misrepresentations in papers filed before the Board."

Opposer responds to applicant's motion with a declaration, attesting to the timely filing on February 25, 2003 of the first, unsigned, extension submission. Opposer also relies on Trademark Rule 2.119(e) which authorizes the Board to allow a party time to furnish a signed copy of a previously filed request to extend time to oppose. Opposer implicitly asserts that his opposition is timely because any signature defects were rectified within the time permitted by the Board.

Opposer counters applicant's attack on his credibility in this case, asserting that bad actions in other, unrelated

litigations do not automatically confer "bad actor" status on opposer in this proceeding.

Analysis

In reviewing the parties' arguments, we observed some confusion by both opposer and applicant as to proper Board procedure governing timeliness and signature of filings. A review of the applicable procedures is believed to be in order.

It is well understood that trademark-related correspondence shall be considered timely if received in the USPTO on or before the expiration of the set period. Ordinarily, the actual date of receipt controls. See Trademark Rule 2.195(a). It is standard practice for the USPTO mailroom to affix a label to incoming correspondence indicating the date of actual receipt in the Office which, generally speaking, may serve as adequate proof of the filing date. However, if the correspondence is not received until after the expiration of the set period, the Board will consider it timely filed if the "certificate of mailing" procedure described in Trademark Rule 2.197 is properly followed.<sup>5</sup> See also TBMP §110.01 (2d. ed. rev. 2004).

The certificate of mailing procedure is applicable to all types of filings in Board proceedings, including a request for an extension of time to oppose. See TBMP §110.07 (2d. ed. rev.

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<sup>5</sup> Other methods of obtaining a filing date other than the "actual date of receipt" are set forth in Trademark Rule 2.195. However, none of these apply to the circumstances of this case.

2004). Parties seeking to invoke this procedure must, prior to the expiration of the set period:

- (1) deposit the correspondence with the U.S. Postal Service, with sufficient postage as first-class mail, with the proper USPTO address, and
- (2) include a certificate on or with the correspondence which states the date of deposit and is signed (separate and apart from any signature for the piece of correspondence itself) by a person who has a reasonable basis to expect that the correspondence will be mailed on or before the date indicated.

See Trademark Rule 2.197(a). See also TBMP §110.02 (2d. ed. rev. 2004). The procedure does not apply in certain instances specified in Trademark Rule 2.197(a), as amplified by Trademark Rule 2.195(c), and the USPTO may require additional evidence to determine if correspondence which bears a certificate of mailing was timely filed, e.g., was mailed on the date stated in the certificate. See *S Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293 (TTAB 1997).

Additionally, we look to Trademark Rule 2.119(e) which states, in pertinent part, that:

"every paper filed in an inter partes proceeding and every request for an extension of time to file an opposition must be signed by the party filing it, or by the party's attorney, but an unsigned paper will not be refused consideration if a signed copy is submitted to the Board within the time limit set forth in the Board's notification of the signature defect."

Thus, the rules require that both the submission and the certificate of mailing thereon must be signed in order for the submission to be given consideration. The Board will not refuse consideration if a signed copy is submitted within the time limit

set forth in the notification of the signature defect by the Office. See Trademark Rules 2.119(e) and 2.197; see also TBMP §106.02 (2d. ed. rev. 2004). Inasmuch as a signature on a certificate of mailing operates to certify the date and manner of mailing on or before the applicable deadline, it is axiomatic that Trademark Rule 2.119(e) only authorizes the Board to obtain a copy of the original certificate that was properly signed on or before the expiration of the applicable period.<sup>6</sup>

Potential opposer's first extension submission was not received by the Board until April 3, 2003, or approximately five weeks after the statutory deadline for its submission. Because this request was unsigned, yet bore a typewritten date which preceded the statutory deadline, the Board on April 18, 2003 allowed potential opposer additional time to submit a signed copy of its request which might establish timeliness *vis-à-vis* the certificate of mailing procedure and otherwise satisfy the USPTO's signature requirements for submissions.

The second extension submission includes a certificate of mailing on April 29, 2003, more than eight weeks after the statutory deadline, and thus, does not establish that potential opposer timely filed a request to extend time to oppose on or before the February 27, 2003 deadline.

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<sup>6</sup> This general signature rule should not be confused with the evidentiary requirements of Trademark Rule 2.197(b)(3), applicable to proof of timeliness of certain lost filings, and should not be misconstrued to give opposer authorization to execute a certificate of mailing *ex post facto*.



Finally, there is the third extension submission, which has been signed and includes a signed certificate of mailing on February 25, 2003. As we consider this submission in relation to the first and second, we become concerned with the fact that the record now includes three different extension papers, all seeking the same ninety-day extension until May 27, 2003, with two different certified mailing dates, in varying degrees of execution.

Moreover, we are concerned with the absence of any explanation by opposer regarding the glaring discrepancies among these three papers. Specifically, opposer provides no evidence that might explain the discrepancies between the April 29, 2003 certificate of mailing date on the second extension submission and the February 25, 2003 certificate of mailing date on the first (unsigned) extension submission and third (signed) extension submission. We cannot overlook these contradictions.

Put simply, the record does not support a conclusion that an extension request bearing a signed certificate of mailing was filed on or before the statutory deadline of February 27, 2003. Thus, potential opposer missed the statutory deadline to file an opposition.

Nor does the record support a finding that the certificate of mailing for potential opposer's third extension submission was actually signed on February 25, 2003. Opposer's declaration falls short of establishing this.

Moreover, there is unexplained delay in the filing of an extension paper herein which bears a signed certificate of timely mailing. The record is devoid of any excuse why potential opposer postponed such filing until May 16, 2003 and until after potential opposer had ostensibly responded to the Board's April 18, 2003 order. When compliance with the certificate of mailing procedure is at issue, the Board cannot accept a request to extend months after it is due without explanation or further evidence of timely signature and filing.

Under the circumstances, we find opposer has not met its burden of establishing the timeliness of the request to extend time to oppose filed by the entity under which opposer claims privity. As such, we hold that the Board's June 3, 2004 action (approving the extension request) was erroneous and it is accordingly vacated. The request to extend time to oppose is denied and consequently, the notice of opposition, filed May 16, 2003, is untimely.

Applicant's motion to dismiss is granted and this opposition proceeding is dismissed as a nullity.<sup>7</sup>

Mandatory use of ESTTA for all future filings in this proceeding

As we reviewed the record of this proceeding, we observed delays in the entry of a number of papers filed by the parties herein which have unnecessarily complicated the administration of this proceeding.

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<sup>7</sup> In view of the dismissal of this proceeding as a nullity, all other pending motions are now moot and have been given no consideration.

The Board has recently introduced an Internet-based filing system referred to as "ESTTA."<sup>8</sup> Use of the ESTTA filing system aids in the efficient processing of papers filed in Board proceedings, eliminates problems associated with lost or mislaid paper filings, minimizes delays associated with paper entry, and affords the parties a means of contemporaneously verifying timely receipt of their submissions by the Board.

In order to simplify matters with regard to the timeliness and entry of any papers which might be filed in this now-nullified proceeding, and in an effort to efficiently manage any post-dismissal filings to avoid unnecessary effort by the parties and undue delay, the Board, in exercising its inherent authority to manage the cases on its docket,<sup>9</sup> will consider only those papers filed herein via the ESTTA system. This requirement shall govern all filings in this proceeding from this date forward by all parties, including but not limited to notification of any petition to the Commissioner, notification of appeal, or request for reconsideration filed by opposer or potential opposer. Any responsive submissions or future filings by applicant herein also are covered by this requirement.

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<sup>8</sup> This Internet-based filing system is also known as the Board's "Electronic System for Trademark Trials and Appeals." Instructions for electronic submission of inter partes filings with the Board are available at <http://estta.uspto.gov/>.

<sup>9</sup> See *Opticians Ass'n of America v. Independent Opticians of America Inc.*, 734 F. Supp. 1171, 14 USPQ2d 2021 (D.N.J. 1990), rev'd on other grounds, 920 F.2d 187, 17 USPQ2d 1117 (3d Cir. 1990) and *S. Industries Inc. v. Lamb-Weston Inc.*, supra.

NOTE: For determining timeliness of future filings, both parties are prohibited from relying on the certificate of mailing or certificate of express mailing procedures for submissions made herein.

***By the Trademark Trial  
and Appeal Board***

\* \* \* \* \*

**Notice Regarding TTAB Electronic Resources and New Rules**

- TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.
- Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at [www.uspto.gov](http://www.uspto.gov).
- The second edition of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/).

TTAB

**IN THE UNITED PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

04-03-2003

U.S. Patent & TMO/TM Mail Rpt Dt #54

CENTRAL MFG. CO.  
P O Box 35189  
Chicago, IL 60707-0189  
Potential Opposer,  
vs.

Trademark: DARKSTAR  
Application SN: 76 308975  
Int. Class No: 009

Northern Telepresence Corp

Filed: 09/05/01

Applicant.

Published: January 28, 2003

Box TTAB/NO FEE  
(IN TRIPLICATE)

**REQUEST FOR A NINETY DAY EXTENSION  
OF OPPOSITION PERIOD**

NOW COMES the Potential Opposer and requests a extension of ninety (90) days from the present close of the opposition period, up to and including May 27, 2003 within which to consider the filing of an Opposition to the above identified application for trademark registration.

Potential Opposer invites opposing counsel to contact the Potential Opposer at Tel No. 773/283-3880 (L. Stoller) in order to discuss settlement of this potential trademark controversy as between the parties and/or to file an express abandonment.

This extension is requested to investigate facts, obtain documentation, and to enable the Potential Opposer to consider its position with regard to opposition of this application.

Respectfully submitted,

By: Leo Stoller Pres.  
Central Mfg. Co., Potential Opposer  
Trademark and Licensing Department  
P.O. Box 35189  
Chicago, Illinois 60707-0189  
773 283-3880 FAX 708 453-0083

Dated: Feb. 25, 2003

Certification of Mailing

I hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to:  
Box TTAB/NO FEE, Asst. Commissioner of Patents and Trademarks,  
2900 Crystal Drive, Arlington, Virginia 22202-3513

Leo Stoller  
Dated: Feb. 25, 2003  
C:\WS\MARKS27\ DARKSTAR.EXT

**EXHIBIT B**

B

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: April 18, 2003

Applicant: Northern Telepresence Corporation  
Serial No.: 76308975  
Filed: 09/05/2001  
Mark: DARKSTAR

Leo Stoller  
Central Mfg. Co.  
P.O. Box 35189  
Chicago, IL 60707-0189

Eric McWilliams, Legal Assistant

On April 3, 2003, potential opposer herein, Central Mfg. Co. filed an unsigned request for an extension of time to oppose the above-identified application.

Potential opposer is advised that Trademark Rule 2.119(e) provides that every paper filed in an inter partes proceeding, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned paper will not be refused consideration if a signed copy is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

Accordingly, potential opposer is allowed until May 18, 2003 in which to submit a signed copy of its request for extension of time to oppose, failing which the request will not be given any consideration.

**IN THE UNITED PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

CENTRAL MFG. CO.  
P O Box 35189  
Chicago, IL 60707-0189  
Potential Opposer,  
vs.

Northern Telepresence Corp

Trademark: DARKSTAR

Application SN: 76 308975

Int. Class No: 009

Filed: 09/05/01

Published: January 28, 2003

Applicant.

Box TTAB/NO FEE  
(IN TRIPLICATE)

**REQUEST FOR A NINETY DAY EXTENSION  
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This extension is requested to investigate facts, obtain documentation, and to enable the Potential Opposer to consider its position with regard to opposition of this application.

Respectfully submitted,

*Leo Stoller*

By: Leo Stoller Pres.  
Central Mfg. Co., Potential Opposer  
Trademark and Licensing Department  
P.O. Box 35189  
Chicago, Illinois 60707-0189  
773 283-3880 FAX 708 453-0083

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2900 Crystal Drive, Arlington, Virginia 22202-3513

*Leo Stoller 4/29/03*

Leo Stoller

C:\WS\MARKS27\DARKSTAR.EXT

**EXHIBIT D**